

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MAXIM LEVIN and VODKA PROPERTIES, LLC,

Plaintiffs,

DECLARATION

-vs.-

Civil Action No.: 20-cv-1511

CITY OF BUFFALO, et al.

Defendants.

ROBERT E. QUINN, Assistant Corporation Counsel, *of Counsel* to Cavette A. Chambers, Esq., Acting Corporation Counsel, under penalty of perjury and pursuant to 28 U.S.C. § 1746, declare the following to be true and correct:

1. I am an attorney licensed to practice law in the Courts of the State of New York and in the United States District Court for the Western District of New York, and I represent the Defendants, CITY OF BUFFALO, BYRON W. BROWN, JAMES COMERFORD, JR., LOU PETRUCCI, TRACY KRUG, and KEVIN COYNE (collectively, "City Defendants"), in this action. As such attorney, I am fully familiar with the facts and circumstances set forth below.

2. This Declaration is offered in support of the City Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(c) and for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, seeking dismissal of Plaintiffs' Complaint, and the Co-Defendant, Empire Dismantlement, Co.'s Cross-Claim, in its entirety, as a matter of law for the reasons set forth in the accompanying Motion.

3. Plaintiffs filed a Complaint asserting various claims against the City Defendants and Empire Dismantlement Co., on October 19, 2020, summonses were subsequently issued, and the case was assigned to the Hon. John. L. Sinatra, Jr.. (*Docket No. 1, 2, and 3*).

4. The City Defendants, through counsel, thereafter filed and served an Answer to the Plaintiffs' Complaint on or about November 13, 2020. (*Docket No 6*).

5. Defendant, Empire Development filed an Answer to Plaintiffs' Complaint with Cross-Claim on or about November 16, 2020. (*Docket No. 7*)

6. The City Defendants, filed an Answer to Empire Development Cross-Claim on or about December 16, 2020. (*Docket No. 8*)

7. Through a Text Referral Order issued by the Hon. John L. Sinatra on November 17, 2020, the Hon. Leslie G. Foschio, United States Magistrate Judge, was designated to act in this case as Magistrate Judge for, among other things, the hearing and disposition of all non-dispositive motions or applications. (*Docket No. 8*).

8. Attached as **Exhibit "A"** is a copy of City of Buffalo 311 Complaint Results Listing for 393 Hampshire, beginning on March 30, 2015.

9. Attached as **Exhibit "B"** are various photographs of 393 Hampshire taken in 2015 and 2016.

10. Attached as **Exhibit "C"** is a copy of the October 16, 2015 Demolition Order for 393 Hampshire signed by the Hon. Patrick M. Carney, with "Final Notice" and supporting photograph.

11. Attached as **Exhibit "D"** are various photographs of 393 Hampshire taken in 2017.
12. Attached as **Exhibit "E"** is a copy of the Inspection file for 393 Hampshire.
13. Attached as **Exhibit "F"** is a Notice of Violation dated March 23, 2018.
14. Attached as **Exhibit "G"** are dated photographs of 393 Hampshire taken in 2019.
15. Attached as **Exhibit "H"** is a copy of the Police Complaint List for 393 Hampshire.
16. Attached as **Exhibit "I"** are copies of the "Final Notice", dated and photographs demonstrating the posting of that "Final Notice" for 393 Hampshire.
17. Attached as **Exhibit "J"** is a copy of the "Notice of Condemnation" for 393 Hampshire, dated September 23, 2019.
18. Attached as **Exhibit "K"** is a copy of the Demolition Plot Plan Completed by Kevin Coyne.
19. Attached as **Exhibit "L"** is a copy of the transcript of Tracy Krug's Deposition taken on March 1, 2022.
20. Attached as **Exhibit "M"** is a copy of the transcript of Kevin Coyne's Deposition taken on March 1, 2022.
21. Attached as **Exhibit "N"** is a copy of the "Notice of Violation" for 393 Hampshire, dated June 28, 2019.

22. Attached as **Exhibit "O"** is a copy of the transcript of David Comerford's Deposition taken on March 29, 2022.

23. Attached as **Exhibit "P"** is a copy of the transcript of Lou Petrucci's Deposition taken on March 29, 2022.

24. Attached as **Exhibit "Q"** is a copy of the transcript from of Max Levin's Deposition taken on November 17, 2021.

25. Attached as **Exhibit "R"** are transcripts of two Housing Court Proceedings on October 21, 2019 and March 12, 2020.

26. Attached as **Exhibit "S"** is a copy of the Plaintiffs' Disclosure Under Federal Rule of Civil Procedure 26(a)(1), dated.

27. Attached as **Exhibit "T"** is a copy of the City Defendants' Reponses to Plaintiff's Interrogatories, dated March 30, 2021.

28. Attached as **Exhibit "U"** is a copy of the relevant portions of City of Buffalo Charter Chapter C, Article 17.

29. Attached as **Exhibit "V"** is a copy of the relevant portions City of Buffalo Charter and Code Chapter 113.

30. All documentary evidence and testimony supports that, even viewed in the light most favorable to the Plaintiff, the City Defendants are entitled to judgment as a matter of law, and that Plaintiff's causes of action have no merit, and that no contested facts sufficient to require a trial of these claims.

WHEREFORE, the City Defendants, respectfully request an Order of the Court granting them Summary Judgment, in whole or in part, dismissing all of Plaintiffs' and Co-Defendant's claims and cross-claims, in their entirety, together with such other and further relief as this Court deems just and proper.

Dated: October 26, 2022
Buffalo, New York

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